

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comcast Cable Communications, LLC, on behalf	)	
of its subsidiaries and affiliates	)	CSR 8026-E
	)	
Petition for Determination of Effective	)	
Competition in Four Communities in Maryland	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 9, 2010**

**Released: September 9, 2010**

By Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in the four communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”) and Dish Network (“Dish”). An opposition to the petition was filed by the Carroll Cable Regulatory Commission (the “CCRC”), which administers Comcast’s cable franchises in the Communities.<sup>3</sup> Petitioner filed a reply.<sup>4</sup>

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>5</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>6</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>7</sup> For the reasons set forth below, and after giving careful consideration to the points raised by the CCRC, we grant the petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

<sup>1</sup>See 47 U.S.C. § 543(l)(1)(B).

<sup>2</sup>47 C.F.R. § 76.905(b)(2).

<sup>3</sup>Letter from Ken Decker, Chair, Carroll Cable Regulatory Commission, to Marlene H. Dortch, Commission Secretary (“CCRC Opposition”), dated Oct. 8, 2008.

<sup>4</sup>Reply to Opposition, dated Oct. 23, 2008.

<sup>5</sup>47 C.F.R. § 76.906.

<sup>6</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>7</sup>See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>8</sup> This test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.<sup>9</sup>

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>10</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>11</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>12</sup> The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>13</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>14</sup> Petitioner also asserts that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.<sup>15</sup> This evidence, if unrebutted, satisfies the first prong of the competing provider test.

6. The CCRC opposes the petition on the grounds that “DBS is not real competition” for cable operators such as petitioner.<sup>16</sup> The CCRC points to “the rapidly increasing rates that [Petitioner] can charge due to its market power” and to “the unfavorable ratings it [receives] for customer satisfaction.”<sup>17</sup> This challenge to counting DBS providers as MVPDs competing with cable operators

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<sup>8</sup>47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>9</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>10</sup>*See* Petition at 3.

<sup>11</sup>*Mediacom Illinois LLC*, 21 FCC Rcd 1175 (2006).

<sup>12</sup>47 C.F.R. § 76.905(e)(2).

<sup>13</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

<sup>14</sup>*See* Petition at Exh. 1.

<sup>15</sup>*See id.* at 3.

<sup>16</sup>CCRC Opposition at 1.

<sup>17</sup>*Id.*

disregards the fact the definition of “MVPD” is in a statute,<sup>18</sup> which we have no authority to alter. DBS providers are explicitly included in the statutory definition and, therefore, we may not exclude them from the class of MVPDs that we consider in the competing provider test.<sup>19</sup> Because the CCRC has not successfully rebutted Petitioner’s evidence, we find that the petition satisfies the first prong of the competing provider test.

7. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Communities on a five-digit zip code basis.<sup>20</sup> Petitioner asserts that it is the largest MVPD in two of the Communities.<sup>21</sup>

8. In the other two Communities, Petitioner’s subscribership is in excess of 15 percent of the households,<sup>22</sup> and so is the subscribership of the DBS providers.<sup>23</sup> In these circumstances, the Commission can determine that the second prong of the competing provider test is met. First, we assume that Petitioner is the largest MVPD provider in the Communities and note that the combined DBS subscribership is greater than 15 percent; we then assume that one of the DBS providers is the largest MVPD in the Community and note that Petitioner’s subscribership is greater than 15 percent. Because both exceed 15 percent, then the second prong of the competing provider test is met regardless of which competitor is the largest MVPD.

9. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>24</sup> as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

10. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

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<sup>18</sup>47 U.S.C. § 522(13) (“‘multichannel video programming distributor’ means a person such as, but not limited to, . . . a direct broadcast satellite service . . . who makes available for purchase, by subscribers or customers, multiple channels of video programming”); *see also* 47 C.F.R. § 76.905(b)(1).

<sup>19</sup>*Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984):

”When a court reviews an agency’s construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”

<sup>20</sup>Petition at 5.

<sup>21</sup>*Id.* at 5.

<sup>22</sup>*Id.*, Declaration of Warren Fitting, Director of Rate Regulation for Petitioner, at ¶ 3 (dated Aug. 28, 2008).

<sup>23</sup>*Id.* at Exh. 5.

<sup>24</sup>*Id.* at 7 & n.30.

### III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>25</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>25</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR 8026-E

COMMUNITIES SERVED BY SUBSIDIARIES AND AFFILIATES OF COMCAST CABLE  
COMMUNICATIONS

Communities	CUID(s)	CPR*	2000 Census Households	Estimated DBS Subscribers
Carroll County	MD0288	43.04%	38038	16372
New Windsor Town	MD0249	52.44%	491	257
Sykesville Town	MD0245	36.34%	1390	505
Union Bridge Town	MD0248	53.33%	372	198

\*CPR = Percent of competitive DBS penetration rate.